

**IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF TEXAS TYLER DIVISION**

BENNY R. ODEM, Jr., #1703386,

Plaintiff,

v.

LONNIE E. TOWNSEND, et al.,

Defendants.

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Case No. 6:22-cv-268-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff, a Texas Department of Criminal Justice (TDCJ) prisoner proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for disposition.


On March 20, 2023, the Magistrate Judge issued a Report and Recommendation recommending that the case be dismissed for failure to comply with the Court's order to file an amended pleading within the bounds of the Court's 30-page limitation on pleadings. Docket No. 31; Local Rule CV-3(d). Specifically, the Magistrate Judge explained that Plaintiff's amended complaint combined a 29-page form complaint and a 38-page "declaration" in support of his claims, for a total pleading of 67 pages. Docket No. 31 at 2. Despite being ordered to file a second amended complaint in compliance with the Court's page limitation, Docket No. 25, Plaintiff affirmatively announced his refusal to do so. Docket No. 29. Accordingly, the Magistrate Judge recommended that this action be dismissed without prejudice. Docket No. 31. Plaintiff filed timely written objections. Docket No. 33.

The Court reviews the findings and conclusions of a Magistrate Judge de novo if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

In pertinent part, Plaintiff’s objection is that his “declaration” attached to his amended complaint should not count against the pleading page limit because it is an exhibit rather than part of the form complaint. Docket No. 33 at 2–3. But for the reasons the Magistrate Judge repeatedly explained, that argument is incorrect. *See* Docket No. 25 at 2; Docket No. 31 at 2. Because Plaintiff’s willful refusal to comply with the Court’s rule governing page limits or its orders to do so is sufficient basis for dismissal, the Court need not address Plaintiff’s objections concerning potential misjoinder of claims or parties.

Having reviewed the record and Plaintiff’s objections de novo, the Court concludes that the objections are without merit and that the findings and conclusions of the Magistrate Judge are correct. Accordingly, the Court hereby **OVERRULES** Plaintiff’s objections and **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 31) as the findings of this Court. It is therefore **ORDERED** that this case is **DISMISSED** without prejudice for failure to comply with the Court’s order and failure to take the steps necessary to prosecute this case. *See* Fed. R. Civ. P. 41(b) (authorizing involuntary dismissal for failure to comply with a court order). All pending motions are **DENIED** as moot.

So **ORDERED** and **SIGNED** this **28th** day of **July, 2023**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE